

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

2

3  
4 CARLOS E. MARTINEZ,  
Plaintiff,

5

VS.

NO. 13cv1049 RB/RHS

6

7 GREAT SOUTHWEST COUNCIL-  
BOY SCOUTS OF AMERICA, and  
8 CHRIS SHELBY, in his individual  
capacity,

Defendants.

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\*\*\*\*\*  
DEPOSITION OF CHRIS SHELBY

12

June 19, 2014

13

1:04 p.m.

14

5732 Osuna Rd. NE

15

Albuquerque, New Mexico 87109

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17

18

PURSUANT TO THE FEDERAL RULES OF CIVIL  
PROCEDURE, this deposition was:

19

20

TAKEN BY: Mr. Michael E. Mozes  
ATTORNEY FOR PLAINTIFF

21

22

REPORTED BY: Jeannine K. Sims, RPR, NM CCR #12  
Paul Baca Court Reporters  
500 Fourth Street NW, Suite 105  
Albuquerque, New Mexico 87102

23

24

25

EXHIBIT

3

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1 Q. You were his supervisor --  
 2 A. I think --  
 3 Q. -- in his chain --  
 4 MR. ARCHULETA: Okay. Hold on. This is  
 5 getting argumentative. Let's -- why don't we -- let's  
 6 see. Is there a question on the table?  
 7 MR. MOZES: Yeah, there is.  
 8 Q. (BY MR. MOZES) Weren't you in his  
 9 supervisory chain?  
 10 MR. ARCHULETA: Okay. You can answer that.  
 11 A. In his supervisory chain, yes.  
 12 Q. (BY MR. MOZES) All right. And would it be  
 13 fair to say that while Mr. Martinez was at the Boy Scouts  
 14 of America you were involved in decisions with regards to  
 15 his job assignments, how he spent his time in the  
 16 workplace --  
 17 A. Certainly. That's very fair.  
 18 Q. All right. Did you have any duties and  
 19 responsibilities related to his performance evaluations?  
 20 A. I reviewed his performance evaluation after  
 21 it was conducted and reviewed with his immediate  
 22 supervisor.  
 23 Q. Right. And certainly you felt in reviewing  
 24 and approving those performance evaluations, you  
 25 certainly felt like you had enough knowledge to do that,

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1 And I'm attempting to give you the full answer so that  
 2 you can -- so I can assist you in understanding how that  
 3 process works. Now, with that said, I think I had a good  
 4 view of the staff members who were working for Lloyd  
 5 enough to be able to sign off and agree with the  
 6 appraisal. Does that answer the question?  
 7 Q. I think so.  
 8 MR. ARCHULETA: Mike, let's take a break,  
 9 please.  
 10 MR. MOZES: Huh?  
 11 MR. ARCHULETA: Let's take a break. It's  
 12 2:15.  
 13 MR. MOZES: Sure.  
 14 (Break from 2:14 to 2:26.)  
 15 Q. (BY MR. MOZES) All right. We're back on  
 16 the record. We're still on that document. Would you  
 17 agree with me it was prohibited at the Boy Scouts of  
 18 America for an employee to be retaliated against for  
 19 reporting an incident or an issue to the President of the  
 20 Council?  
 21 A. Yes.  
 22 Q. Now, if you'll just drop down one, it's that  
 23 next complaint procedure. See where I'm referring to?  
 24 A. Uh-huh.  
 25 Q. Investigation. I'm sorry. "Investigation

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1 right?  
 2 A. To -- to sign off on his appraisal? His  
 3 review?  
 4 Q. To review and approve.  
 5 A. I had enough knowledge?  
 6 Q. I mean, you felt comfortable in being able  
 7 to do that.  
 8 A. Certainly. That's part of the process.  
 9 Certainly:  
 10 Q. Yeah. And would it also be fair to say that  
 11 you sufficiently observed Carlos' work ethic and work  
 12 product in the workplace to have an informed opinion  
 13 about how he was performing?  
 14 A. My main observations of any employee,  
 15 including Carlos, is looking at the productivity that's  
 16 outlined in the SMART goals. I rely on Lloyd as the  
 17 immediate supervisor to interpret such things as  
 18 competencies in the employee evaluation.  
 19 Q. Yeah. That's not responsive to my question.  
 20 My question was, did you observe Mr. Martinez  
 21 sufficiently in the workplace with regards to his work  
 22 performance and work product to have an informed opinion  
 23 when you made the review and approval of his performance  
 24 evaluation? That's what my question was.  
 25 A. Well, you know, I recognize the question.

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1 of Complaint." First sentence, I'm just going to read  
 2 it. "All complaints of harassment that are reported to  
 3 management will be investigated promptly and thoroughly  
 4 and corrective action will be taken where warranted."  
 5 Now, this is the way I read it. See if we agree. I read  
 6 that to say if any employee brings forward any complaint  
 7 of harassment, that it will be investigated promptly and  
 8 thoroughly. Is that the way you read it?  
 9 A. That's the way I read it.  
 10 Q. Now, what was your role if any, Mr. Shelby,  
 11 in the investigation that was conducted into the  
 12 allegations that Hope Kits brought forward in July of  
 13 2012?  
 14 A. No role.  
 15 Q. None?  
 16 A. No role.  
 17 Q. And if I understand correctly -- and I want  
 18 you to correct me if I'm wrong -- your only involvement  
 19 in that series of events was to sign off on the letter of  
 20 termination.  
 21 A. Correct.  
 22 Q. Now, were you present when that letter of  
 23 termination was delivered to Carlos?  
 24 A. No.  
 25 Q. Did you ever have any conversations with

12 (Pages 42 to 45)

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1 Carlos Martinez about the content of that letter of  
 2 termination?

3 A. No.

4 Q. And as a matter of fact, although you signed  
 5 it you did not write it.

6 A. Correct.

7 Q. And you understood that in signing that  
 8 document that you were performing an administrative  
 9 function as Carlos' -- as the Scout Executive in that  
 10 office to sign off on a termination, right?

11 A. Yes.

12 Q. Who replaced Carlos?

13 A. We brought in Barbara Johnson to work  
 14 part-time in that role.

15 Q. Right. So that went from a full-time  
 16 position to about a 20-hour-a-week position, right?

17 A. Approximately.

18 Q. Yeah. And Barbara Johnson actually was not  
 19 brought in to fill that position for about three or four  
 20 months, right? She did not immediately take that over.

21 A. I don't recall the specific timeframe for  
 22 that. I'd have to look at the employment letter.

23 Q. Did you hire Ms. Johnson into that position?

24 A. I believe so.

25 Q. Why did you hire Ms. Johnson?

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1 candidate. She was very -- very firm that she only  
 2 wanted to work part-time. She was very good at saying  
 3 what she wanted to do and what she didn't want to do.  
 4 And she seemed like the logical choice. Had to come from  
 5 within, in my opinion.

6 Q. Let me hand you what was marked as  
 7 Lunsford 8.

8 A. Okay.

9 Q. Now, the only question I have for you  
 10 related to this document --

11 MR. ARCHULETA: Go ahead, Mike.

12 MR. MOZES: He doesn't need to read it. Is  
 13 that what you were --

14 MR. ARCHULETA: No. He offered to show it  
 15 to me and I said, "No, you don't have to." So I think  
 16 our hand movements were interpreted --

17 THE WITNESS: Am I not allowed to do that?  
 18 I thought you were needing to see what documents.

19 MR. ARCHULETA: Absolutely fine. Go ahead  
 20 with your question, Mike.

21 Q. (BY MR. MOZES) My understanding is when  
 22 this resignation came in from Juliana Cabral -- you knew  
 23 Ms. Cabral, right?

24 A. Yeah. Yes, she was an employee.

25 Q. Yeah. You were not in the workplace, were

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1 A. She had experience in working in the  
 2 program.

3 Q. And -- and why did you make that position a  
 4 part-time position?

5 A. That's all that Barbara wanted to do.

6 Q. Was that a competitive bid?

7 A. The position?

8 Q. Yeah.

9 A. No.

10 Q. Why not?

11 A. I don't think anyone could have stepped into  
 12 that role and be able to keep the program moving in the  
 13 direction it was headed unless they had experience within  
 14 that program.

15 Q. Okay. Now, I want to make sure I understand  
 16 what you just said. I understand you to be saying, "If  
 17 we had opened that position to a competitive bid for a  
 18 full-time employee, I do not believe there was anyone who  
 19 could have met the requirements and/or the qualifications  
 20 for the position." Right?

21 A. I believed because of Barbara's experience  
 22 as an adult probation officer and her experience in the  
 23 program, she was the candidate. If we had opened it up  
 24 to a competitive bid, which by the way is not standard in  
 25 the Boy Scouts of America, she would have been the ideal

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1 you?

2 A. Correct.

3 Q. And would it be fair to say that prior to  
 4 terminating Carlos on July 27th, 2012, that's the date,  
 5 that you did not know this document existed, did you?

6 A. Correct.

7 Q. Okay. Now, I want to talk to you for a  
 8 little bit about while you were on this leave of absence,  
 9 did you tell Lloyd Lyman, "Hey listen, Lloyd. If  
 10 something comes up in the workplace feel free to call  
 11 me"?

12 A. No.

13 Q. Did you tell anybody that?

14 A. No.

15 Q. Would it be fair to say during those five  
 16 weeks when you were on that leave of absence that you had  
 17 no communications with Boy Scout employees?

18 A. That would be fair.

19 Q. Now, I want to talk to you for a little bit  
 20 about sexual harassment training, all right?

21 A. Uh-huh.

22 Q. Now, one of the allegations that Ms. Cabral  
 23 makes, and you know, I just want to -- well, here. I've  
 24 got a copy of it. If you will turn to Page 2. And I'm  
 25 in the first paragraph. You see that first paragraph?

13 (Pages 46 to 49)

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1 that indicates that this incident with Liza Bley occurred  
 2 some point prior to June of 2011, right?

3 A. I believe so.

4 Q. Okay. There we go. Now, and it is true, is  
 5 it not, that between that incident occurring, June 14th  
 6 of 2012 when Ms. Cabral wrote this resignation letter,  
 7 there had been no sexual harassment training in the  
 8 workplace, right?

9 A. Because it was being revamped by the  
 10 national organization.

11 Q. Yeah.

12 A. It's correct. But you just can't say it  
 13 didn't happen without understanding the parameters around  
 14 it.

15 Q. Right.

16 A. You know, and the whole sexual harassment  
 17 training program is conducted by the national  
 18 organization through webinars. That way they can have  
 19 documentation that people have taken it. We receive  
 20 those e-mails from the national organization I think at  
 21 that time it was every two years to take the training.

22 Q. Uh-huh.

23 A. They revamped it and as soon as we were able  
 24 to get it up and running from the national organization,  
 25 we conducted it.

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1 Q. Now, are you able to tell me whether any  
 2 sexual harassment training was ever conducted at the Boy  
 3 Scouts of America's offices for the Great Southwest  
 4 Council in 2011?

5 A. No. It was being revamped.

6 Q. All right. And so what I understand your  
 7 testimony to be is that that revamping, I'm going to call  
 8 it a process. I don't know if it was a process or not  
 9 but I'm going to call it a process. That revamping  
 10 process for that sexual harassment training took over a  
 11 year.

12 A. As I understand it, yeah.

13 Q. Okay. And I want to get to that whole  
 14 diversity thing. It's that last paragraph. "I would  
 15 strongly suggest the office to adopt not only a sexual  
 16 harassment training but also a diversity training and  
 17 better ways to intentionally support and value Scoutreach  
 18 and all of its employees for that matter." So it's not  
 19 that Ms. Cabral was talking about diversity training, she  
 20 was talking about sexual harassment training and  
 21 diversity training, right?

22 A. Correct. But she was never asked to set up  
 23 sexual harassment training in the office. She can't  
 24 speak other than through hearsay to say it was a token  
 25 interview. She was not in the interview. She was not in

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1 the room, she heard it from Liza. In my opinion we did a  
 2 very good interview with her, we suspended Chase, and he  
 3 got a written letter of reprimand.

4 Q. He did?

5 A. Yes.

6 Q. When?

7 A. After he returned back to work.

8 Q. In 2011?

9 A. I believe so.

10 Q. You don't know, do you?

11 A. I don't remember the dates. You know, sir,  
 12 I would love to give you as much of the details as I can.  
 13 I just don't remember the date.

14 Q. Do -- did you ever sign off on a letter of  
 15 reprimand to Chase Wixon?

16 A. Yes.

17 Q. Are there any documents? See, I don't have  
 18 any -- are there any documents that would corroborate  
 19 your testimony on this record today, sir, with regards  
 20 to, "I conducted something more than a token interview  
 21 with Liza Bley"?

22 A. No. But I am under oath, correct?

23 Q. I don't understand your question.

24 A. Well, there's no written documents but  
 25 you're asking me to tell the truth.

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1 Q. Well, see, I -- you know, okay. Let's go  
 2 there. How could you possibly sit there in that chair  
 3 under oath and testify that you conducted an adequate  
 4 investigation into Ms. Bley's complaints when you don't  
 5 even have a written document to show you investigated it?  
 6 How can you say that, sir?

7 A. Well, I guess it's from my side. I felt  
 8 that we conducted an adequate interview.

9 Q. Well, I mean, Mr. Shelby, with regards to  
 10 conducting sexual harassment investigations for the Boy  
 11 Scouts of America it's not about what you think is  
 12 adequate. It's about what the Boy Scouts thinks is  
 13 adequate, right?

14 A. I believe it was an adequate interview.

15 Q. Okay. What occurred at the interview?

16 A. We sat down with Liza and we asked her what  
 17 happened. We listened to her, we told her that Chase was  
 18 under suspension until we can get to the bottom of this.

19 Q. Who's "we"?

20 A. Caryl Sharp is the Council Program Director.

21 Q. With regards to that investigation did you  
 22 speak to anyone other than Liza Bley?

23 A. I spoke to Liza and I spoke to Chase.

24 Q. Is there anything that ever documented --  
 25 that documents that you ever spoke to Chase Wixon?

15 (Pages 54 to 57)

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1 the future I will always run this through the national  
 2 organization.  
 3 Q. Sir, do you understand that before this was  
 4 kicked up to national there were zero conversations  
 5 between Lyman and Carlos about the allegations? Are you  
 6 aware of that?  
 7 A. I wasn't in the office at that time.  
 8 Q. So why would you sit here and testify to the  
 9 fact that in order to take Carlos' interests into  
 10 consideration, and all of that other, that it was kicked  
 11 up into the national? Why would you testify to that?  
 12 A. Because that was the conversation and a  
 13 belief that we had after the -- the investigation.  
 14 Q. And in addition, I understood -- and you  
 15 correct me if I'm wrong -- you had no communications  
 16 during the course of the investigation related to the  
 17 processing or the allegations that led to the  
 18 investigation.  
 19 A. No.  
 20 Q. That's true, right?  
 21 A. That's true.  
 22 Q. So the whole thing about taking Carlos' best  
 23 interests in effect, that's why it was kicked up --  
 24 A. Well, I --  
 25 Q. No. Hold on a second.

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1 her updates. You know, my intent of giving her updates  
 2 was to reassure her we were working on that.  
 3 And unfortunately, she took it as she was  
 4 the office watchdog. But I would have confidential  
 5 conversations, she'd be working in a cube and I would go  
 6 to her and say, "Hey. We're still working on this."  
 7 I never intended to make her feel like the  
 8 office watchdog. And she may have felt the training was  
 9 to appease her as she writes here, but my intent was to  
 10 get the training conducted because it was important to  
 11 follow through on my word.  
 12 Q. How many times did you contact the national  
 13 office with regards to when this training would be ready  
 14 after you had the initial contact and you were told that  
 15 it was being revamped?  
 16 A. Two to three.  
 17 Q. And you always talked to Jim Gilbert's  
 18 assistant?  
 19 A. I believe so. You know, and I recognize  
 20 what I should have done there. I recognize I should have  
 21 pushed harder for that training or found out what we  
 22 could have done to have that training completed.  
 23 Q. Did it surprise you, sir, at how quickly  
 24 that training was available after the allegations against  
 25 Carlos came forward?

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1 A. I apologize.  
 2 Q. And that testimony, it's assumption and  
 3 presumption on your part, right?  
 4 A. Yes.  
 5 Q. All right. Now, I'm looking on here. I'm  
 6 on that same paragraph, sir. "At the meeting in February  
 7 2012" -- it's the second page. "I was also told that  
 8 sexual harassment training would be implemented as soon  
 9 as possible." Well, that's what you told Liza Bley,  
 10 right?  
 11 A. Yes.  
 12 Q. "Since then I have been told several times  
 13 by Mr. Shelby that they were investigating trainings and  
 14 it would be available soon." Well, that's not true, is  
 15 it?  
 16 A. We were not investigating trainings. No.  
 17 We were waiting for the update from the national  
 18 organization. And I was told it would be available soon.  
 19 Q. Do you know why Ms. Bley would write that if  
 20 it weren't true?  
 21 A. What -- what -- I think there's just a  
 22 confusion on Liza -- on Liza's part. I don't think she's  
 23 intentionally writing something that's untrue. That  
 24 doesn't sound like Liza. You know, I'd continue to  
 25 review this and she felt uncomfortable when I would give

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1 A. Yeah. Yes. Excuse me.  
 2 Q. Let me show you another exhibit that was  
 3 entered into depositions during the course of this week.  
 4 It's a letter to you from Christopher Orton who was Hope  
 5 Kitts' representative at that time.  
 6 A. Yes.  
 7 Q. When did you first see that letter?  
 8 A. It was on or around July 10th.  
 9 Q. Well, how could you have seen it on or  
 10 around July 10th if you weren't in the workplace?  
 11 A. I think I was in the workplace then.  
 12 Q. Oh. So by July 10th you were back?  
 13 A. It was somewhere around that second week, I  
 14 think. I think.  
 15 Q. Because I understood it was five weeks and  
 16 it began at some point in the first half of June, right?  
 17 A. It was that first week of June.  
 18 Q. All right. Now, when you saw that letter  
 19 was it on or about July 10th?  
 20 A. Yeah, I think so.  
 21 Q. And what did you do with that letter after  
 22 you received it?  
 23 A. I believe I forwarded it off to the  
 24 appropriate people.  
 25 Q. Who were the appropriate --

19 (Pages 70 to 73)

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1 A. To either Jim Gilbert or Ron Lunsford or --  
 2 that's what I believe I did.  
 3 Q. Well see, you were sitting right there in  
 4 that chair this morning when I showed Lyman the e-mails  
 5 to Gilbert where he forwarded this letter.  
 6 A. Okay. Then I must have forwarded it to --  
 7 or did I get this or was it sent to -- to directly to  
 8 Lloyd? I don't remember.  
 9 Q. Well, if you don't remember -- see sir, I  
 10 would feel much more comfortable, I mean, much more  
 11 comfortable if you would just say, Mr. Shelby, "I don't  
 12 remember, Mr. Mozes." Or, "I can't recall" rather than  
 13 testifying about something you think happened or may have  
 14 happened.  
 15 A. Well, let's go back to the beginning of this  
 16 deposition when I was trying to answer -- when I was  
 17 thinking about the questions and I couldn't answer them.  
 18 And we went off the record and you were wondering if I  
 19 have a problem. And while I think I do I'm also trying  
 20 to answer the questions. Now, if I need to say "I don't  
 21 remember" I'll keep that in mind for the rest of this  
 22 deposition. I want you to understand I'm trying to  
 23 answer your questions to the best of my ability.  
 24 Q. Well, yeah. You know, the only thing -- I  
 25 just -- I'm not your attorney. The only thing -- because

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1 that could be given to an employee who worked at the  
 2 offices of the Great Southwest Council?  
 3 A. Could have reprimand, written or verbal.  
 4 Could have the employee take certain courses or  
 5 trainings. Could -- termination is certainly -- that's  
 6 not a discipline, that's -- you could have a performance  
 7 improvement plan which would help with performance issues  
 8 and that's a form of discipline. Those are the ones that  
 9 come to mind. I can't think of anything else.  
 10 Q. Suspension?  
 11 A. Suspension.  
 12 Q. Termination is a discipline action.  
 13 A. Okay.  
 14 Q. Now, would it -- and let me tell you what I  
 15 mean by progressive, okay? When I say progressive  
 16 disciplinary action policy, I mean to say that if an  
 17 employee violates a policy in the workplace or has a  
 18 performance issue, that they start out from the lowest  
 19 level of discipline depending upon the severity of the  
 20 misconduct or performance issue, okay?  
 21 A. Okay.  
 22 Q. And routinely the way discipline would be  
 23 handled is that if they continue in that same context  
 24 they are going to be bumped up to the next level. If  
 25 they continue they'll be bumped up to the next level.

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1 I'm saying that to protect you, sir. I don't want you to  
 2 answer questions or guess about answers to questions or  
 3 speculate about answers to questions --  
 4 A. Okay.  
 5 Q. -- when you're really not sure.  
 6 A. You told me that in the beginning. And I  
 7 have not -- I didn't deal with this particular piece.  
 8 Can we take a break?  
 9 Q. Sure.  
 10 MR. ARCHULETA: I think we're right where we  
 11 need to go here.  
 12 (Break 3:15 to 3:23.)  
 13 Q. (BY MR. MOZES) Doing all right?  
 14 A. Yeah.  
 15 Q. Okay. We're back on the record, Mr. Shelby.  
 16 I want to talk about discipline just for a second there  
 17 at the Boy Scouts of America and the Great Southwest  
 18 Council, all right?  
 19 A. Yes, sir.  
 20 Q. Do you know what the phrase "progressive  
 21 discipline" means?  
 22 A. No.  
 23 Q. Never heard it?  
 24 A. Never.  
 25 Q. What were the different levels of discipline

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1 And if they continue persisting in that action that they  
 2 would then be terminated.  
 3 A. Uh-huh.  
 4 Q. Was that the philosophy underlying  
 5 disciplinary action in the Boy Scouts of America there at  
 6 the Great Southwest Council?  
 7 A. Yeah, I would -- I would think so.  
 8 Q. Okay.  
 9 MR. ARCHULETA: Well, Mr. Shelby, was  
 10 that -- was that the disciplinary --  
 11 MR. MOZES: No. Excuse me. Charles.  
 12 Charles. No. Please. Please.  
 13 MR. ARCHULETA: Well --  
 14 MR. MOZES: No. Charles, please.  
 15 MR. ARCHULETA: He said he thinks so.  
 16 MR. MOZES: Yeah, I know. I heard his  
 17 answer.  
 18 MR. ARCHULETA: I'm suggesting that he  
 19 answer --  
 20 MR. MOZES: No, no, no, no. Please.  
 21 MR. ARCHULETA: -- whether he knows.  
 22 MR. MOZES: Excuse me, Charles. I'm not  
 23 going to let you do that. I'm not going to let you do  
 24 that.  
 25 MR. ARCHULETA: Not going to let me do what?

20 (Pages 74 to 77)

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<p>1 Suggest that he answer?</p> <p>2 MR. MOZES: Yeah. Suggest or coach the 3 witness or interrupt my questioning because you didn't 4 like his answer. I'm not going to do it. So if you want 5 to ask him a question later you certainly can do that. I 6 have no problems whatsoever doing that.</p> <p>7 MR. ARCHULETA: Well --</p> <p>8 MR. MOZES: But you've been around these 9 rodeos enough, Charles --</p> <p>10 MR. ARCHULETA: Sure.</p> <p>11 MR. MOZES: -- to know that's just not 12 appropriate.</p> <p>13 MR. ARCHULETA: I'm just saying we've had a 14 lot of discussion here about answering the question based 15 on personal knowledge, based on being able to remember 16 things. And I'm just adding to that --</p> <p>17 MR. MOZES: I know how to ask a question. 18 So if I need to follow up that question, believe you me, 19 I know how to follow up that question. And if you want 20 to follow up that question you certainly can do that. 21 But you are doing me no favors. And if that's your 22 explanation that you're doing me some kind of favor by 23 interrupting and saying anything in the middle of the 24 question, that certainly is not true, Charles. And 25 again, you're going to have every opportunity to ask this</p>	<p>1 Q. And what I want to do is direct your 2 attention to the second full paragraph.</p> <p>3 A. Yes.</p> <p>4 Q. And I'm looking at the third line that 5 begins, "Further." Do you see where I'm referring to?</p> <p>6 A. Yes.</p> <p>7 Q. Where it says, "Further, you should not have 8 any discussion with any employees about the existence or 9 nature of this investigation or its outcome."</p> <p>10 A. Yes.</p> <p>11 Q. Now, the first thing that I want to focus in 12 on is the nature of this investigation. Now, prior to 13 the investigation that's referenced in Exhibit No. 21, 14 were you part of an investigation related to your 15 misconduct in the workplace?</p> <p>16 A. Yes.</p> <p>17 Q. And did you give any written statements in 18 relation to that investigation?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether anyone else was 21 interviewed in relation to that investigation?</p> <p>22 A. I don't know.</p> <p>23 Q. And did anyone ever explain to you why 24 that -- why you would be immediately terminated if you 25 shared with anyone the fact that you had received this</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 79</p> <p>gentleman questions if you would like to do that.</p> <p>MR. ARCHULETA: Well, I didn't interrupt in the middle of a question. I waited until after the question and then I added a suggestion. And I think if you'd like we'll move on and I will follow up with a question if necessary as you suggest. How's that?</p> <p>MR. MOZES: That sounds great. That sounds fabulous. That way we can do it in accordance with the Rules.</p> <p>Q. (BY MR. MOZES) Now, is it your understanding, Mr. Shelby, that up until the time that Carlos was terminated from the Great Southwest Council that he had never been disciplined for any reason, right?</p> <p>A. That's my understanding.</p> <p>Q. Now, I neglected to tell you this back when I was asking a series questions about it. Have you ever received any training, any workplace training from the Boy Scouts with how to conduct an investigation?</p> <p>A. No.</p> <p>Q. It's Lunsford 21, Mr. Shelby. Okay. Now, we looked at this previously. And would you agree with me that that's your signature down there at the bottom where it says "Employee's Signature" and you dated it 8/10/12?</p> <p>A. Yes.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 81</p> <p>written reprimand?</p> <p>A. No.</p> <p>Q. And is it your understanding that this particular document is still in your personnel file, right?</p> <p>A. Yes.</p> <p>Q. And it will remain in your personnel file as long as you're associated or employed by the Boy Scouts of America, right?</p> <p>A. Yes.</p> <p>Q. Okay. Let me make sure I put this back together. Now, what I'm going to do is I'm going to hand you a document. I'm going to put them both together just for your convenience. They've both been entered as an exhibit so I'm not going to reenter them. And I'm going to ask you to look at both of these and then I'm going to ask you a question.</p> <p>A. Okay.</p> <p>Q. Now, the first page is a series of e-mails moving that July 27th letter back and forth between different management employees employed by the Boy Scouts, right?</p> <p>A. Correct.</p> <p>Q. And would it be fair to say that with regards to that letter you had no input in the content?</p>

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1 A. Correct.  
 2 Q. Did anyone, Mr. Shelby, ever -- and I mean  
 3 ever up until today -- ever tell you what specific  
 4 policies Carlos had allegedly violated that led to his  
 5 termination? Did anyone ever tell you?  
 6 A. I don't recall.  
 7 Q. Let me just switch out. Prior to you  
 8 signing off on this letter, Mr. Shelby, to Carlos, July  
 9 27, 2012 did you have any discussions with anyone about  
 10 the content?  
 11 A. No.  
 12 Q. Mr. Shelby, were you a witness in the  
 13 unemployment hearing that was conducted on Mr. Martinez's  
 14 unemployment claim?  
 15 A. Yes.  
 16 Q. You testified?  
 17 A. Yes.  
 18 Q. Did you testify under oath?  
 19 A. Yes.  
 20 Q. And under oath you testified that  
 21 Mr. Martinez had been hired -- had been fired for sexual  
 22 harassment, right?  
 23 A. Yes.  
 24 Q. And you were actually sitting again there  
 25 yesterday when both Gilbert and Lunsford testified that

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1 executive summary report?  
 2 A. I didn't have that report.  
 3 Q. And I'm talking about the executive summary  
 4 report that was written by Jim Gilbert.  
 5 A. That's correct.  
 6 Q. Well, how could you not have had that report  
 7 if it was written in July of 2012?  
 8 A. It wasn't given to me.  
 9 Q. You know that Jim Gilbert sent that down to  
 10 the offices of the Great Southwest Council. You knew  
 11 that, right?  
 12 A. No, I didn't know that.  
 13 Q. So I just want to make sure I understand  
 14 what you're saying. You're saying that, "I had Liza  
 15 Bley's and Juliana Cabral's statements and based upon  
 16 those statements I concluded that Mr. Martinez had been  
 17 fired for sexual harassment and that's why I testified  
 18 earlier to the unemployment hearing officer of that."  
 19 A. That was my interpretation.  
 20 Q. Did anyone else from the Boy Scouts of  
 21 America testify during that unemployment hearing with  
 22 respect to the reasons for which Mr. Martinez was  
 23 terminated?  
 24 A. I believe Lloyd Lyman was part of that call  
 25 and Liza Bley was part of that call. Liza. Excuse me.

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1 Mr. Martinez was not fired for sexual harassment, right?  
 2 A. I believe they cited a number of issues.  
 3 Q. Do you want to go through them? If you need  
 4 to go through them we can go through them.  
 5 A. No. No, I don't need that.  
 6 Q. Behavior that was disruptive to the smooth  
 7 functioning of the workplace --  
 8 A. Yeah.  
 9 Q. -- immoral and indecent conduct. And you  
 10 know that they related that solely to the romantic  
 11 relationship policy.  
 12 A. Yep.  
 13 Q. So I just want to know, when you testified  
 14 under oath previously to the hearing officer on  
 15 Mr. Martinez's unemployment claim why did you say that he  
 16 had been fired for sexual harassment?  
 17 A. As I recall, the hearings officer wanted  
 18 documentation so I gathered the documentation as to why  
 19 he was terminated, read it, and sent it in. And that was  
 20 my interpretation of it. I did not talk to anyone, I  
 21 just read those statements and sent it in.  
 22 MR. MOZES: Could you read that last answer  
 23 back.  
 24 (Requested portion was read.)  
 25 Q. (BY MR. MOZES) Did you send in the

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1 Liza Bley.  
 2 Q. And during that hearing did Lloyd Lyman also  
 3 testify that Mr. Martinez was terminated because of  
 4 sexual harassment?  
 5 A. I don't recall.  
 6 Q. So were you surprised yesterday when both  
 7 Lunsford and Gilbert testified that they could not  
 8 conclude whether Mr. Martinez had engaged in sexual  
 9 harassment or not? Were you surprised by that testimony?  
 10 A. No.  
 11 Q. This was also entered as an exhibit  
 12 previously. Let's stick that one here because it's got a  
 13 tag on it. I can't remember what number it was but I'm  
 14 not going to look at it. It's the termination notice.  
 15 A. Yes.  
 16 Q. "Request to Initiate the Termination  
 17 Process." Does your signature appear anywhere on that  
 18 document?  
 19 A. Yes.  
 20 Q. Can you indicate to me where?  
 21 A. Under Scout Executive Signature. For  
 22 Shelby, 7/27/12.  
 23 Q. Okay. There you go. Then you will see it  
 24 says that he would not -- the Boy Scouts of America would  
 25 not recommend that Carlos be rehired, right?

22 (Pages 82 to 85)

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<p>1 A. Correct.</p> <p>2 Q. And where it says, "This -- this separation</p> <p>3 causes a vacancy," and you said "no," right?</p> <p>4 A. Correct.</p> <p>5 Q. Now, and the document is dated by you July</p> <p>6 27, 2012. That was the same day you give Carlos the</p> <p>7 termination letter, right?</p> <p>8 A. I did not give Carlos the termination</p> <p>9 notice.</p> <p>10 Q. That's the same day you signed it.</p> <p>11 A. Yes.</p> <p>12 Q. And had you already decided, Mr. Shelby, to</p> <p>13 replace Carlos with Barbara Johnson by that date?</p> <p>14 A. What this document does, it creates a</p> <p>15 vacancy within the professional development department</p> <p>16 that kicks in a vacancy for a professional scouter to</p> <p>17 apply for this job.</p> <p>18 And I didn't want the national organization</p> <p>19 to create a listing on the vacancy roster going to -- it</p> <p>20 would be posted on the web that we had a vacancy for a</p> <p>21 professional employee. So that's the reason that "X" is</p> <p>22 there. Not because any decision had been made other than</p> <p>23 we were not going to put a professional. And a</p> <p>24 professional is a district executive into that role.</p> <p>25 Q. Was Barbara Johnson ever a professional</p>	<p>1 A. I don't recall.</p> <p>2 Q. Can I see that one more time?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Why didn't you mark off that, "We would</p> <p>5 prefer" area on that document?</p> <p>6 A. I'm sorry?</p> <p>7 Q. It's right underneath your signature there.</p> <p>8 It's the last line. Why didn't you mark that?</p> <p>9 A. Because it didn't create a vacancy. And</p> <p>10 this -- this box is stating if we create a vacancy are we</p> <p>11 preferring a new district executive or an experienced</p> <p>12 district executive? And therefore, I didn't check those</p> <p>13 boxes.</p> <p>14 Q. Is that form only used with professional</p> <p>15 employees?</p> <p>16 A. Yeah. It says here, "in order to finalize a</p> <p>17 termination of a Professional Scouter."</p> <p>18 Q. Can I just see it a second?</p> <p>19 A. Sure.</p> <p>20 Q. Well, you know, this form -- yeah. I'm</p> <p>21 going to give it back to you because I want Mr. Archuleta</p> <p>22 to see it as well. But I want you to read the second</p> <p>23 sentence that begins, "Scout Executives." The second</p> <p>24 sentence in that if you could you just read it into the</p> <p>25 record.</p>
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<p>1 employee?</p> <p>2 A. No.</p> <p>3 Q. Do you have to be full-time to be a</p> <p>4 professional employee?</p> <p>5 A. Yeah. It -- you have to go through a</p> <p>6 screening process, you have to attend a week-long</p> <p>7 training course. You know, it's ...</p> <p>8 Q. Do you have to be full-time to be a</p> <p>9 professional employee?</p> <p>10 A. We only hire full-time professional</p> <p>11 employees. I can't speak for what other councils, and I</p> <p>12 don't know what their requirements are.</p> <p>13 Q. Prior to marking that "no" box did you talk</p> <p>14 to any HR representative or national about how you should</p> <p>15 appropriately mark that "no" box? How you should</p> <p>16 appropriately mark that?</p> <p>17 A. No.</p> <p>18 Q. Certainly you didn't ask permission from</p> <p>19 anybody to do that, right?</p> <p>20 A. No.</p> <p>21 Q. Had you ever done that before?</p> <p>22 A. It creates a vacancy mark it no?</p> <p>23 Q. No. Had you ever done it that you marked</p> <p>24 "no" so that it would not kick in a professional opening</p> <p>25 on the database?</p>	<p>1 A. Out loud?</p> <p>2 Q. Yeah. I do.</p> <p>3 A. "Scout Executives are directed to confer</p> <p>4 with and seek advice from their Area Director to ensure</p> <p>5 the decision to terminate is in accordance with Council</p> <p>6 policies and practices and that it is consistent with the</p> <p>7 values and the mission of the Boy Scouts of America."</p> <p>8 Q. Now, I just want to make sure that I</p> <p>9 understand what happened in this case. You never had the</p> <p>10 opportunity to seek advice or to evaluate whether this</p> <p>11 termination was in accordance with scout values or</p> <p>12 policies and procedures because you were never involved</p> <p>13 in the termination action itself other than to sign off</p> <p>14 on the letter, right?</p> <p>15 A. Correct.</p> <p>16 Q. So as far as you seeking advice from someone</p> <p>17 else as to the propriety of the termination of Carlos</p> <p>18 Martinez, you never did that, did you?</p> <p>19 A. No.</p> <p>20 Q. Okay.</p> <p>21 MR. MOZES: I just need a minute, Charles.</p> <p>22 MR. ARCHULETA: Sure.</p> <p>23 (Break from 3:56 to 4:03.)</p> <p>24 MR. MOZES: Pass the witness.</p> <p style="text-align: center;">* * *</p>

23 (Pages 86 to 89)